

ESTTA Tracking number: **ESTTA760860**

Filing date: **07/27/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91227976
Party	Defendant Comic Book Classrooms LLC
Correspondence Address	Betsy Proffitt Holland & Hart LLP Attention: Trademark Docketing P.O. Box 8749 Denver, CO 80201  becooperstein@hollandhart.com, docket@hollandhart.com
Submission	Answer
Filer's Name	Beth E. Cooperstein
Filer's e-mail	becooperstein@hollandhart.com, docket@hollandhart.com, egquacken- bush@hollandhart.com
Signature	/Beth E. Cooperstein/
Date	07/27/2016
Attachments	2016.07.27 - SDCC Answer Opposition.pdf(20331 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

San Diego Comic Convention,  Opposer,  v.  Comic Book Classrooms LLC,  Applicant.	Opposition No.: 91227976  Mark: DENVER COMIC CON & design  Serial No.: 86/369,144
---	--

**ANSWER TO NOTICE OF OPPOSITION**

Applicant Comic Book Classroom (“Applicant”), by and through its counsel, responds as follows to the Notice of Opposition:

[Unnumbered Paragraphs]. Applicant denies that Opposer will be damaged by registration of Applicant’s DENVER COMIC CON & design mark as set forth in Application Serial No. 86/369,144. Applicant is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of the unnumbered paragraphs and therefore denies them.

1. Applicant admits that Comic Book Classrooms LLC, identified as a Colorado limited liability company, is the applicant of record for Application Serial No. 86/369,144. Applicant further admits that such entity did not exist at the time the application was filed, and to its knowledge, has never existed. Applicant states that non-existent entity Comic Book Classrooms LLC was mistakenly identified as the owner of record as the result of a clerical error. The correct owner is Comic Book Classroom, a Colorado nonprofit corporation.

2. Applicant admits that it filed Application Serial No. 86/369,144 (the “Application”), and states that the Application speaks for itself. To the extent Paragraph 2 contains allegations inconsistent with the Application, Applicant denies them.

3. Applicant states that the USPTO records for Registration No. 4165481 speak for themselves. Applicant denies the allegations of Paragraph 3 to the extent they are different from or claim more than what is set forth in the USPTO records. Applicant denies the remaining allegations contained in Paragraph 3.

4. Applicant states that the USPTO records for the registrations and applications set forth in Paragraph 4 speak for themselves. Applicant denies the allegations of Paragraph 4 to the extent they are different from or claim more than what is set forth in the USPTO records. Applicant is without information or knowledge sufficient to form a belief as to the truth of the contents of the USPTO records or the remaining allegations of Paragraph 4 and therefore denies them.

5. Applicant states that the USPTO records for the registrations set forth in Paragraph 5 speak for themselves. Applicant denies the allegations of Paragraph 5 to the extent they are different from or claim more than what is set forth in the USPTO records. Applicant is without information or knowledge sufficient to form a belief as to the truth of the contents of the USPTO records or the remaining allegations of Paragraph 5 and therefore denies them.

6. Applicant lacks sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraph 6 and therefore denies them.

7. Applicant denies the allegations contained in Paragraph 7.

8. Applicant admits that it seeks to register the mark set forth in the Application but denies the remaining allegations contained in Paragraph 8.

9. Applicant lacks sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraph 9 and therefore denies them.

10. In response to Paragraph 10, Applicant repeats each admission, denial and denial of sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraphs 1 through 9 of this Answer, as if fully set forth herein.

11. Applicant admits that its use and registration of the mark set forth in the Application are without Opposer's consent, because no consent is required. Applicant denies the remaining allegations contained in Paragraph 11.

12. Applicant denies the allegations contained in Paragraph 12.

13. Applicant denies the allegations contained in Paragraph 13.

14. Applicant denies the allegations contained in Paragraph 14.

15. Applicant admits that registration of the mark set forth in the Application would provide it with prima facie exclusive rights therein. Applicant denies the remaining allegations contained in Paragraph 15.

16. The allegations contained in Paragraph 16 are a legal conclusion to which no response is required.

17. Applicant denies that registration of the mark set forth in the Application will damage Opposer. Applicant lacks sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraph 17 and therefore denies them.

18. In response to Paragraph 18, Applicant repeats each admission, denial and denial of sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraphs 1 through 17 of this Answer, as if fully set forth herein

19. Applicant lacks sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraph 19 and therefore denies them.

20. Applicant admits that its use of the mark set forth in the Application is without Opposer's consent, because no consent is required. Applicant denies the remaining allegations contained in Paragraph 20.

21. Applicant denies the allegations contained in Paragraph 21.

22. Applicant denies the allegations contained in Paragraph 22.

23. Applicant denies the allegations contained in Paragraph 23.

24. Applicant denies the allegations contained in Paragraph 24.

25. The allegations contained in Paragraph 25 are a legal conclusion to which no response is required.

26. Applicant denies that registration of the mark set forth in the Application will damage Opposer. Applicant lacks sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraph 26 and therefore denies them.

27. In response to Paragraph 27, Applicant repeats each admission, denial and denial of sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraphs 1 through 26 of this Answer, as if fully set forth herein.

28. Applicant denies the allegations contained in Paragraph 28.

29. In response to Paragraph 29, Applicant repeats each admission, denial and denial of sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraphs 1 through 28 of this Answer, as if fully set forth herein

30. Applicant admits that Comic Book Classrooms LLC, identified as a Colorado limited liability company, is the applicant of record for Application Serial No. 86/369,144.

Applicant further admits that such entity did not exist at the time the application was filed, and to its knowledge, has never existed. Applicant states that non-existent entity Comic Book Classrooms LLC was mistakenly identified as the owner of record as the result of a clerical error. The correct owner is Comic Book Classroom, a Colorado nonprofit corporation. Pursuant to 37 CFR § 2.71 and Trademark Manual of Examining Procedure §§ 1201.02(c)(3) and (7), this is a correctable error and is not fatal to the application.

### **AFFIRMATIVE DEFENSES**

#### **FIRST DEFENSE**

The Notice of Opposition fails to state a claim upon which relief can be granted.

#### **SECOND DEFENSE**

The words “COMIC CON” or “COMIC-CON” are generic terms and are incapable of functioning as a source identifier for Opposer’s goods and services.

#### **THIRD DEFENSE**

The words “COMIC CON” or “COMIC-CON” are descriptive and incapable of functioning as a source identifier for Opposer’s goods and services, and have not acquired distinctiveness with respect to Opposer’s goods and services.

#### **FOURTH DEFENSE**

Opposer’s Marks as a whole are merely descriptive, and incapable of functioning as a source identifier for Opposer’s goods and services.

#### **FIFTH DEFENSE**

Opposer’s claims are barred by the doctrines of laches, estoppel, waiver and/or acquiescence.

## SIXTH DEFENSE

Opposer's claimed fail because there is no likelihood of confusion between the parties' marks.

At the time this Answer to the Notice of Opposition is filed, all possible facts supporting all possible affirmative defenses may not yet have been discovered. Applicant therefore reserves its rights to amend this Answer to allege additional affirmative defenses if subsequent investigation so warrants.

WHEREFORE, Applicant respectfully requests that the Board dismiss this opposition and permit Applicant's DENVER COMIC CON & design mark to mature to registration on the Principal Register of the United States Patent and Trademark Office.

Dated: July 27, 2016

Respectfully submitted,

/Beth E. Cooperstein/

Beth E. Cooperstein

HOLLAND & HART LLP

P.O. Box 8749

Denver, Colorado 80201

Phone: (303) 295-8018

Facsimile: (303) 975-5379

[becooperstein@hollandhart.com](mailto:becooperstein@hollandhart.com)

[docket@hollandhart.com](mailto:docket@hollandhart.com)

**ATTORNEYS FOR COMIC BOOK CLASSROOM**

### **CERTIFICATE OF SERVICE**

The undersigned certifies that the attached **ANSWER TO NOTICE OF OPPOSITION** was served on the below-identified counsel for Opposer on July 27, 2016 by electronic mail:

Peter K. Hahn  
Pillsbury Winthrop Shaw Pittman LLP  
501 West Broadway, Suite 1100  
San Diego, California 92101

\_\_\_\_\_  
/Beth E. Cooperstein/